



ఆంధ్రప్రదేశ్ రాజపత్రము
THE ANDHRA PRADESH GAZETTE
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AMARAVATI, FRIDAY, OCTOBER 27, 2023

G.835

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**I ADDITIONAL SENIOR CIVIL JUDGE'S COURT
GUNTUR**

Thursday this the 27th day of July, 2023

INSOLVENCY PETITION NO.5/2021

Between:

Adapa Vijaya Santhi, W/o SrinivasaRao, aged about 36 years, R/o Door No.24-8-22, Koneti Road, R. Agraharam, Guntur.

...PETITIONER.

AND

1. Challa Josh, S/o Srinivas, Hindu, aged about 28years, R/o 6/15, Bhavya Apartments, Brodipet, Guntur.
2. Challa Chakravarthi, S/o Srinivas, Hindu, aged about 30 years, R/o 6/15, Bhavya Apartments, Brodipet, Guntur.
3. Addepalli Subrahmanyam, S/o Krishna Murthy, R/o Door No.10-16-44, Brahmin Street, Vadapalli Vari Lane, Vijayawada Urban, Krishna District.
4. Anka Satyanarayana, S/o late Govinda Rajulu, Hindu, aged about 48 years, R/o Door No.81-13-1182, Indira Gandhi Colony, 12/1 Lane, Nallacheruvu, Guntur.
5. The Official Receiver, District Court Premises, Guntur.

...RESPONDENTS.

This petition coming on 22.7.2023 for final hearing before me in the presence of Sri L. Prasad, Advocate for petitioner and respondents 1 to 5 are remained exparte and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to declare the petitioner as insolvent.

2. Main case of petitioner, in brief, is that,

(i) she is a resident of Guntur. During the year 2010, her husband started the Iron Hardware business. Later, in the year 2016, he extended his iron and Hardware business and continued the same up to August 2019. He used to purchase Iron Hardware material from the manufacturers in Delhi, Amruthsagar, Aligarh, Hyderabad, Vizag, etc. on a cash basis.

(ii) With a view to developing his business and expanding it, the petitioner borrowed money from the respondents by executing blank promissory notes and issuing blank cheques at a higher rate of interest. The entire borrowed money was invested in the business of her husband. Initially, she was regular in payment of interest. In the meanwhile, in the year 2017, her husband met with an accident and was hospitalized for two years. They spent nearly Rs. 40,00,000/- for his treatment. Her husband underwent eight surgeries. In the month of February 2019, his left leg was amputated. Due to ill health, her husband could not concentrate on the business from March 2017 to June 2019. Consequently, her husband sustained heavy losses and is unable to continue the business. Finally, her husband closed the business in 2019.

(iii) Due to unforeseen circumstances and competition in the business, the petitioner and her husband could not conduct the business and ultimately incurred heavy losses. Further, due to heavy competition, he was forced to sell the Iron Hardware material at a cheaper rate and also on credit. Ultimately, he sustained a huge loss, and the same was effected on the petitioner.

(iv) Subsequent to the borrowal, the petitioner came to know that all the respondents were doing call-money business. Due to the threats hurled by them, he was forced to pay interest at a huge rate. Since the date of borrowing, the petitioner has been paying interest regularly at a higher rate. The interest amount exceeded the principal amount.

v) Persons from whom the petitioner borrowed money started pressurizing the petitioner for repayment of the amount. In fact, she borrowed amounts for the purpose of her husband business and to develop the same.

(vi) While so, respondents, who obtained blank cheques from the petitioner as security, are threatening her that they will present the cheques for collection and also threatening to take criminal action against her after dishonor of blank cheques. Some of the respondents have anti-social elements, and some of them have criminal records. When the respondents pressed for repayment of the amounts, she expressed her inability to repay the amounts as they sustained huge losses.

(vii) As there is no hope to revive her husband's business and she is not in a position to realize the amounts and her debts exceed her properties, she filed the present petition to adjudge her as insolvent.

3. Despite service of substituted service of notice by way of paper publication, respondents 1 to 5 did not turn up before the court and no representation was made on their behalf. Hence, they were set *ex parte*.

4. **Now the point for determination is:-**

"Whether the petitioner is entitled to be adjudged an insolvent as prayed for?"

5. During the course of enquiry, the petitioner herself examined as P.W.1, and no document was marked on her behalf.

6. Heard arguments.

7. Perused the record.

P O I N T :-

8. This petition is filed under Section 10 of the Provincial Insolvency Act. So, it is necessary to go through the prerequisites laid down under Section 10 of the Provincial Insolvency Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

9. The very beginning words of Section 10(1) enunciates that inability to pay the debts is SINE QUA NON for filing an insolvency petition by the debtor.

10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows :

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under Section 25(2) of the Provincial Insolvency Act, which reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

12. On a combined reading of Sections 10, 24, and 25(2), it makes abundantly clear that the petitioner/debtor is not entitled to be adjudged insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare her insolvent.

13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹ wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another² , the Hon'ble High Court held that,

1 2002 (3) ALD 456

2 2014 (3) ALT 602

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove, that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Provincial Insolvency Act extensively, emphasizing Sections 10 and 24 of the Provincial Insolvency Act. Ultimately, it was held that, even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

17. On the touchstone of these legal principles, this Court shall now proceed to test the case of the petitioner/debtor.

18. It is the case of petitioner that she borrowed amounts from the respondents at a higher rate of interest for the business of her husband and its expansion; and that due to heavy competition, her husband was forced to sell hardware material at a cheaper rate, and consequentially, he sustained heavy losses in the business and as such, she was not in a position to repay the debts, and her liabilities exceeded her assets. On the other hand, respondents remained exparte.

3 2010 (6) ALD 514

4 2005 (1) ALT 407

19. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded her properties and, thereby, she was unable to pay debts, the petitioner relied on her own testimony. She examined herself as P.W.1. She reiterated the averments of the petition in her chief examination affidavit. The respondents did not cross-examine her. Thus, her evidence is unchallenged.

20. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not file any documents like a counterfoil, etc. But she furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.

21. For a better understanding, particulars of debts shown in petition 'A' schedule property is stated hereunder:

'A' schedule

Sl.No.	Name of the Creditor	Amount due	Nature of debt
1.	Challa Josh	2,00,000-00	Empty Pronote notes (4 Nos) and Empty Bank of Baroda Cheques (4 Nos)
2.	Challa Chakravarthi	2,00,000-00	Empty Pronote Notes (2 Nos) and Empty Bank of Baroda Cheques (3Nos)
3.	Addepalli Subrahmanyam	2,00,000-00	Empty Pronote Notes (2 Nos) and Empty Bank of Baroda Cheques (2 Nos)
4.	Anka Satyanarayana	1,00,000-00	Empty Pronote Notes (2 Nos) and Empty Bank of Baroda Cheques (2 Nos)
	Total	7,00,000-00	

22. The above 'A' schedule property crystallizes that the petitioner is indebted to Rs. 7,00,000/-. Now the question is, whether her debts exceed her properties?

23. Petitioner showed her immovable properties, bank securities, debtors, and cash in hand, in petition 'B1 to B4' as nil, while showing her wearing apparel, i.e., sarees, in B-5 schedule property, as worth about Rs. 500/-. As per petition B schedule property, she has wearing apparel of sarees worth about Rs. 500/-.

24. It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudicate herself as insolvent.

25. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged as insolvent. Accordingly, this point is answered.

26. In the result, the petition is allowed by adjudicating the petitioner as insolvent and giving six months time to discharge. All her properties are vested with the Official Receiver to deal with the same according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 27th day of July, 2023.

Y. GOPALA KRISHNA,
I Additional Senior Civil Judge,
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1 : Adapa Vijaya Santhi

For Respondents: None.

DOCUMENTS MARKED

For Petitioner:

-NIL-

For Respondents:

-NIL-

Y. GOPALA KRISHNA,
*I Additional Senior Civil Judge,
Guntur.*

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